

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter |) | |
| |) | |
| Upper St. Clair Cablevision, Inc. |) | CUID No. PA2095 (Union) |
| d/b/a Adelphia Cable Communications |) | |
| |) | |
| Petition for reconsideration and refund plan |) | |

**ORDER ON RECONSIDERATION
AND REFUND PLAN ORDER**

Adopted: March 14, 2002

Released: March 20, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 99-434 ("Prior Order"),¹ filed with the Federal Communications Commission ("Commission") on April 5, 1999 by the above-referenced operator ("Operator").² Our Prior Order resolved a complaint against Operator's August 1, 1998 cable programming services tier ("CPST") rate increase in the above-referenced community. On April 6, 1999, Operator filed a refund plan in response to our Prior Order. In this Order, we deny Operator's Petition, reject Operator's refund plan and calculate Operator's refund liability.

2. Under the Communications Act,³ the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁴ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act")⁵ and our rules implementing the legislation ("Interim Rules"),⁶ required that a complaint against the CPST rate be filed

¹ See In the Matter of Upper St. Clair Cablevision, Inc. d/b/a Adelphia Cable Communications, DA 99-434, 14 FCC Rcd 3533 (1999).

² The local franchising authority filed an opposition to the Petition on April 19, 1999, and Operator filed a reply on April 28, 1999.

³ Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

with the Commission by an LFA that has received more than one subscriber complaint.⁷ The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁹ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.¹⁰

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹¹ Cable operators may also justify rate increases on a quarterly basis using FCC Form 1210, based on the addition and deletion of channels, changes in certain external costs and inflation.¹² Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹³ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹⁴

4. In response to the complaint filed against its August 1, 1998 CPST rate increase, Operator filed an FCC Form 1240 ("1998 FCC Form 1240") with the Commission as an unregulated operator, in accordance with the *Thirteenth Reconsideration Order*.¹⁵ In our Prior Order, we made several adjustments to Operator's 1998 FCC Form 1240, which resulted in a revised maximum permitted rate ("MPR") of \$17.79 rather than the \$19.12 MPR calculated by Operator. Because Operator's actual CPST rate of \$18.24 exceeded its MPR, we found Operator's actual CPST rate of \$18.24 to be unreasonable. The only issue raised by Operator in its Petition is our adjustment of Line D2 (Current External Costs Segment). We adjusted Line D2 to \$6.9868 from \$5.6684 because Operator included \$6.9868 for external costs in the calculation of its MPR on its previous FCC Form 1240 ("1997 FCC Form 1240"). That calculation resulted in an MPR and actual CPST rate of \$15.70. Operator then inserted \$15.70 as the starting rate on its 1998 FCC Form 1240. In order to reduce the \$15.70 rate to its base amount, exclusive of any external costs previously included in that rate, we deducted the \$6.9868 previously included in Operator's calculation of \$15.70.

⁷ See Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

⁸ See Section 76.956 of the Commission's Rules, 47 C.F.R. §76.956.

⁹ *Id.*

¹⁰ See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

¹¹ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, 11 FCC Rcd 388 (1996).

5. In its Petition, Operator argues that because it filed its 1998 FCC Form 1240 as an unregulated system, we were not entitled to rely on information from a previous filing. Operator maintains that the Bureau should have relied only on the 1998 FCC Form 1240 Operator provided to the Commission in support of the August 1, 1998 CPST rate increase. Operator argues that it included information concerning its external costs with its 1998 FCC Form 1240, and that information supports its argument that it only included \$5.6684 in its actual CPST rate of \$15.70.

6. In the *Thirteenth Reconsideration Order*, the Commission decided to end regulatory review of an operator's entire rate structure in response to the filing of a complaint. However, we stated that "[a]lthough Commission review will be so limited, in order to meet its burden of showing that its CPST rates are not unreasonable, the operator nevertheless may have to provide the Commission with details about its previous increases where no earlier filing provides those details."¹⁶ In this case we had both an earlier filing and additional details at the time we reviewed Operator's 1998 FCC Form 1240. Both the earlier filing and the external cost documentation provided by Operator supported our conclusion that Operator included \$6.9868 for external costs in its actual CPST rate of \$15.70. Once an operator has filed FCC forms, each of which requires a signed certification statement that the information on the FCC form is true and correct, we are entitled to act upon that information. In this case, Operator certified that it was including \$6.9868 for external costs in its CPST rate calculation of \$15.70. In addition, the Bureau staff reviewed the external cost information provided with Operator's 1998 FCC Form 1240 and concluded that our adjustment to Line D2 was correct. Operator claims that we ignored that information but provides no detailed explanation as to why Operator believes the documentation supports its argument that it included only \$5.6684 in its actual CPST rate of \$15.70. For these reasons, we deny Operator's Petition.

7. Our review of Operator's refund plan reveals that the Operator failed to properly calculate the interest on its refund liability. Therefore, we calculate a refund plan as follows: For the period from August 10, 1998 (the date of the first complaint) through March 31, 1999, we calculate an overcharge of \$0.45 per month per subscriber. Our total calculation, including five percent franchise fees and interest calculated through April 30, 2002, equals \$9,226.00. We will order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

8. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that Operator's petition for reconsideration IS DENIED.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 and of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$9,226.00, plus interest accruing from April 30, 2002 to the date of refund, within 60 days of the release of this Order.

¹⁶ *Id.* at ¶ 162.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 and of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau